BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JUDITH JACKSON) Claimant)	
VS.	Docket No. 176,169
BOEING MILITARY AIRPLANES	DOCKEL NO. 170, 109
Respondent) AND	
AETNA CASUALTY & SURETY	
Insurance Carrier) AND	
KANSAS WORKERS COMPENSATION FUND	

<u>ORDER</u>

Claimant appeals from an Order of May 12, 1994, wherein Administrative Law Judge John D. Clark denied claimant's request for penalties.

Issues

Whether claimant is entitled to penalties stemming from respondent's refusal to authorize Dr. George Lucas as the authorized treating physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant requests penalties under K.S.A. 44-512a due to respondent's failure to pay for medical treatment and other expenses as ordered by the Court. Judge Clark found there were no sums due and owing by the respondent and the Court had no jurisdiction to order penalties under K.S.A. 44-512a.

K.S.A. 44-512a states in part:

"(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when

IT IS SO ORDERED.

due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, "

The Appeals Board finds that penalties cannot be assessable under K.S.A. 44-512a unless compensation, in the form of either medical or disability benefits, is due and owing. The finding by the Administrative Law Judge that no penalties can be assessed if no amounts are due and owing is proper and the Appeals Board affirms same.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated May 12, 1994, is affirmed.

Dated this day of February, 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Steven R. Wilson, Wichita, KS Frederick L. Haag, Wichita, KS Kendall R. Cunningham, Wichita, KS John D. Clark, Administrative Law Judge George Gomez, Director